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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/282,857	03/31/1999	JOSEPH KIMLER	33432	9204

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EXAMINER

LEVY, NEIL S

ART UNIT PAPER NUMBER

1616

DATE MAILED: 11/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary 09

Application No.

282857

Applicant(s)

ARMER

Examiner

NDC Low

Group Art Unit

16/6

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 8/7/02
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-20 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-20 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

Receipt is acknowledged of amendment of 8/7/02.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The rejection of record is maintained. The question is; is the weight/weight basis of (1) the total composition, (2) the carrier, (3) the water diluent and composition, or (4) some other aspect of the composition?

Claims 16-20 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The rejection of record is maintained.

There is no support examiner can identify, to permit one in the art to know, that if you provide a known insecticidal compound, of claim 1, with surfactant, abrasive and an unspecified spray diluent, that it will kill any given insect at any given amount. The insect needs to be determined, as does the amount to provide insecticidal effect; in combination with the required abrasive and surfactant. These parameters would require an inordinate amount of testing and experimentation for the pesticide applicator of ordinary skill in the art. However, specification of basis for % of identified surfactant and

insecticide, and of target species, would bring the level of required testing to within that of one of ordinary skill in the art to achieve.

Claims 1-14, 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Putter et al 4678774 in view of Knight et al, Lowell and Schaff.

The rejection of record is maintained. Instant claim 1 requires non-aqueous compositions, see Putter (column 3, line 10-line 20) powder of aqueous or non-aqueous, with emulsifier (surfactant) and at least one insecticidally effective amount of insecticide —avermectin (line 65-68, column 3) against termites (Table 1) with an abrasive, silicon dioxide (line 77). Spray formulations and application are applicable as powders or liquids (column 3, line 22-38). However, the % surfactant and abrasive are left for one in the art to determine. Knight provides additional (abrasives) identifying the mechanism of action (Figure 2) of the abrasive material.

Lowell is cited to show an insecticidal arylpyrrole, including chlorfenapyr, (claim 10) composition, in solid or liquid spray (column 1, lines 51-57) with 3-20% surfactant (column 2, lines 22-28). Added abrasives and carriers total 60-95% (column 2, lines 27-31) inclusive of kaolin.

Applicant's arguments filed 8/7/02 have been fully considered but they are not persuasive. Applicant's arguments are directed toward conditions outside of the composition and application thereof as claimed—the composition as claimed, and methods of use—spraying are obvious over the prior art of record.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

Art Unit: 1616

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 308-4556 for regular communications and ^{872 9307} 305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy: mv
November 1, 2002


NEIL S. LEVY
PRIMARY EXAMINER